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OPPENHEIMER WOLFF & DONNELLY LLP
840 NEWPORT CENTER DRIVE
SUITE 700
NEWPORT BEACH, CA 92660

EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

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DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 08/749259	Applicant(s) S. Kovac et al
Examiner Michael Brown	Group Art Unit 3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on _____
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-42 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 16-39 and 42 is/are allowed.
- ☒ Claim(s) 1-7, 9-15, 40-41 and 43-44 is/are rejected.
- ☒ Claim(s) 8 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 9
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fenwick Cawood, as set forth in the previous office action, rejection of claim 1, Paper No 7.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Thomalla, in the rejection of claims 14-15, Paper No. 7.

Claims 2-3, 5, 9-10, 13 and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Taylor as set forth in the previous office action in the rejection of claims 2-3, 5, 9-10, 13 and 40-41, Paper No. 7.

Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Baker, as set forth in the previous office action, in the rejection of claims 6-7, Paper No. 7.

Claims 4 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Neal, in the rejection of claims 4 and 11-12, as set forth in the previous office action, Paper No. 7.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Cawood.

Allowable Subject Matter

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-39 and 42 are allowed.

Response to Arguments

Applicant's arguments filed March 4, 2004 have been fully considered but they are not persuasive. Applicant argues that Cawood does not disclose a medical drape having an adhesive proximal to an aperture that allows the drape to be secured to an area around the genitalia. However, Cawood discloses a medical drape having an aperture 19 having an adhesive (pressure sensitive adhesive covered by 18). Thus, the adhesive is proximal to the opening. As to where the adhesive is used to attach the opening to the user's body is a function of the device. Applicant argues that Fenwick does not disclose adhesive proximal the aperture in the drape. Applicant also argues that Cawood does not remedy the deficiencies of Fenwick. However, Fenwick discloses in the environment of a surgical drape having an opening and an adhesive on the drape.

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Cawood was used as a modifier to provide an adhesive that is proximal to the opening. Applicant argues that Taylor does not remedy the deficiencies of Fenwick and Cawood. However, Taylor was used as a modifier to provide a stiffener on the pouch to prevent the pouch from collapsing during use. Applicant argues that Neal does not remedy the deficiencies of Fenwick, Cawood or Taylor. However, Neal was used as a modifier to provide an oval shaped opening and markings on the pouch. Applicant argues that Baker does not remedy the deficiencies of Fenwick or Cawood. However, Baker was used as a modifier to provide an antimicrobial agent on the drape. Applicant argues that Thomalla does not remedy the deficiencies of Fenwick or Cawood. However, Thomalla was used as a modifier to provide adhesive tabs on the drape.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 703-308-2682. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
May 17, 2004



MICHAEL A. BROWN
PRIMARY EXAMINER